June 11, 2020

RE: Joint Trade Request to Remove Section 11 of HB20-1420

Members of the Senate Finance Committee,

We write today to respectfully but **strongly encourage you to remove Section 11 of HB20-1420** related to annuity taxation. The Pandemic is further harming retirement account values but adding a tax in addition is further detrimental to Coloradans who are already struggling to save for retirement. Section 11 would expand the scope of the state's existing premium tax to include a broader range of annuity products, which would have the effect of reducing the payments received by annuity owners under their annuity contracts.

Taxing Annuities Would Harm Injured Coloradans- In addition to retirement security, another way in which individual annuities are used is for "structured settlements." Structured settlements are used in some civil lawsuits where a claimant can opt to receive a monetary settlement over time, instead of as a lump sum. In these lawsuits, the defendants (or their insurers) often purchase annuities to fund the settlements. Under this legislation those who have suffered an injury or the death of a loved one will remain entitled to income tax-free payments, but those structured payments would be reduced due to this newly assessed premium tax. Removing Section 11 would fix this problem and ensure help will continue to flow to those who have suffered serious physical injuries or who have lost a loved one.

Farmers, ranchers and small business owners are the most likely to lack an employer-provided pension and, for retirement, often rely on the funds they receive when they sell their farms, ranches and business. This proposal subjects their life savings to a second round of taxation on already taxed savings. These Colorado citizens will no longer be able to add as much to their retirement nest egg due to the discriminatory tax.

Harm to Main Street Investors- This premium tax increase, combined with low interest rates, will be devastating to insurance providers. They will simply be unable to provide guaranteed investments to main street investors that are in dire need of these products with today's uncertain markets.

Taxing annuities will punish the domestic industry- Every state except Hawaii has a retaliatory tax statute. These statutes ensure that if a state increases the tax burden on foreign insurers, the domestic insurers may be forced to pay additional taxes in all other states. Colorado domestic insurers will be punished in 49 other jurisdictions by this bill and may be forced to pay additional taxes to other states on all premiums written in those 49 jurisdictions. ACLI estimates that every $1000 of tax collected under this proposal will cost Colorado domestic insurers $250 in taxes that these domestics will need to pay in other states.

TCJA premise is flawed- The presentation in the House Finance Committee was based, in large part, on the tax advantages gained by the business community in the Federal Tax Cuts and Jobs Act of 2017. A close reading of that law would show that while corporations received a reduced corporate tax rate, several deductions were also removed for the life insurance industry. Quite simply, this premium tax proposal seeks redress on a flawed premise.

In short, unlike other industries, the life insurance industry received no net rate reduction. Furthermore, any future corporate rate increase with no adjustment to the life insurer base broadeners specified in TCJA means life insurers will end up paying more tax than intended and will disproportionately target the life insurance industry and its consumers. (This is because the TCJA base broadeners were designed around a specific corporate tax rate of 21% and were not indexed to the corporate tax rate). In fact, any increase in corporate tax rates will increase life insurer taxes to more than what life insurers paid when the rate was 35%.

Premium Tax conversion to income tax is substantial- Colorado's current 2% premium tax life insurance rate converts to an effective state income tax rate of 10.5%. Keep in mind, this increase would be *in addition to* the tax increases associated with the net operating loss carryover cap.

Colorado Premium Tax is high compared to national average- Colorado's current 2% premium tax life insurance rate is already higher than the national premium tax rate weighted average. (Based on an Ernst & Young study the national weighted average was 1.98%).

Life insurers are a growing and stable source of tax revenue to Colorado- Premium taxes paid by life insurers are independent of whether a life insurer earned a profit and the natural increase in premium volume ensures that Colorado is guaranteed a stable flow of tax receipts that almost always grow – since 2008 an average of 1.3% per year regardless of the profitability of life insurers. This is because the premium tax is a gross receipts tax. During economic downturns like the current COVID-19 recession, life insurers continue to pay tax while other industries, subject to a profit tax, often pay nothing or generate losses that are off-set against either past or future taxes. For example, in 2009, if life insurers were subject to the income tax, the industry's aggregate tax burden would have been -$2.1 million but, because the industry pays a premium tax, Colorado collected, in aggregate, an estimated $79 million. During this economic and health crisis, it is manifestly unfair to increase the taxes paid by one of the few industries that will owe 2020 taxes to Colorado.

HB20-1420 is unfair to Colorado retirees and particularly those without employer-provided retirement plans. As Colorado retirees struggle to overcome the financial impact on their retirement savings, this second tax on funds that already have been taxed will make it far more difficult. Moreover, the premium tax ensures that the tax obligation of life insurers occurs regardless of their profitability and this ensures a stable and dependable revenue stream to Colorado.

Again, we urge you to **remove Section 11 of HB20-1420** and protect those who are trying to secure their financial future.

Respectfully,

Tyler Laughlin
Regional Vice President – State Relations
American Council of Life Insurers

Carl Larson
Colorado Executive Director
National Association of Insurance and Financial Advisors

Eric Vaughn
Executive Director
National Structured Settlements Trade Association

Jason Berkowitz
Chief Legal & Regulatory Affairs Officer
Insured Retirement Institute

Maria Town
President and CEO
American Association of People with Disabilities